



THE CITY OF NEW YORK  
**LAW DEPARTMENT**  
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March 13, 2008

**BY FACSIMILE**

Honorable Michael H. Dolinger  
 United States Magistrate Judge  
 Southern District of New York  
 500 Pearl Street  
 New York, NY 10007  
 Fax: 212-805-7928

*ENDORSED ORDER*

*IF defendant intend to take plaintiff's deposition, they must do so within the current discovery schedule.*

*MC/LSM*  
*3/13/08*

Re: Richard Richardson v. City of New York, et al., 07 CV 7198 (LAK) (MHD)<sup>1</sup>

Your Honor:

As the Assistant Corporation Counsel assigned to defend the City of New York in the above-referenced action, I in write in response to plaintiff's letter dated March 11, 2008 in which he requests that the Court order defendant City of New York ("City") and defendants Metropolitan Transposition Authority Police Officer Fuenes and Sergeant Smith to take plaintiff's deposition.<sup>2</sup>

At the initial conference on January 24, 2008, the parties agreed on the record to conduct plaintiff's deposition on March 6, 2008. However, by letter dated February 26, 2008 defendant City informed plaintiff and defendants Fuenes and Smith that the deposition must be rescheduled due to scheduling conflicts.

<sup>1</sup> This case has been assigned to Assistant Corporation Counsel Katherine E. Smith, who is presently awaiting admission to the bar and is handling this matter under the supervision of ACC Caryn Rosencrantz. Ms. Smith may be reached directly at (212) 513-0462.

<sup>2</sup> A copy of plaintiff's March 11, 2008 letter is annexed hereto for the Court's convenience.

On further consideration and based upon a review of the facts of this case, defendant City will not conduct plaintiff's deposition at this time. Documentation produced by co-defendants Fuenes and Smith during the course of discovery indicates that, in fact, defendants Fuenes and Smith are employees of the Metropolitan Transposition Authority, not the City of New York. Neither defendant City nor any of its employees have any involvement in this matter, and as such, the case should be dismissed as to the City.<sup>3</sup> Accordingly, defendant City intends to file a motion for judgment on the pleadings with the Court, and thus will not expend the unnecessary cost of deposition. In the event that co-defendants wish to take plaintiff's deposition, the City of New York will likely attend. Notwithstanding, at this time, the City intends to move at the close of discovery without plaintiff's deposition.

I thank Your Honor for considering the within matter.

Respectfully submitted,



Caryn Rosencrantz (CR 3477)  
Assistant Corporation Counsel  
Special Federal Litigation Division

cc: Richard Richardson  
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<sup>3</sup> Co-defendants have indicated a willingness to furnish defendant City with an appropriate affidavit.